

February 21, 2017

**VIA FACSIMILE TRANSMISSION AND ECF FILING**

By Facsimile:

The Honorable Victor Marrero  
United States District Court  
Southern District of New York  
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New York, New York 10007  
**Fax: (212) 805-6382**

By ECF:

The Honorable James L. Cott  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 130  
New York, New York 10007

**Re: C.D.S. Inc. v. Zetler et al., No. 16 Civ. 3199 (VM)(JLC)**

Hon. Judges Marrero and Cott:

We are incoming counsel to plaintiff and counterclaim defendants C.D.S. Inc., Jerome Viollon, Christelle Riot, Christophe Racle, Jerome Marechaux and CDS Sarl (collectively, the “CDS Parties”). We write in response to Ihsan Dogramci’s letter to the Court earlier today. We note that the letter was misdirected to Judge Cott’s chambers as to the issue of substitution of counsel.

**1. The Court Should So-Order the CDS Parties’ Stipulation**

Due to a general breakdown of communication, both Norris McLaughlin & Marcus, P.A. (“NMM”) and the CDS Parties have expressed a desire to end NMM’s representation. Under New York law, a client has an absolute right to change attorneys. *Demov, Morris, Levin & Shein v. Glantz*, 53 N.Y.2d 553 (N.Y. 1981); *In re First City Nat’l Bank & Trust Co.*, 759 F. Supp. 1048 (S.D.N.Y. 1991). I have successfully managed discovery issues in other matters and we do not anticipate that there will be a significant delay caused by substitution. Courtesy copies of the Stipulation and Order to Substitute Counsel and accompanying Declaration, filed last Friday February 17, 2017 [Dkts. 229–230] are annexed hereto as Exhibit A.

**2. We Anticipate No Delay in the Case**

Here, forcing NMM’s representation to continue against the wishes of the attorneys and the CDS Parties contravenes the CDS Parties’ right and will likely frustrate efforts to complete discovery expeditiously. After the departure of lead counsel Jeremy Deutsch and Christian Cangiano from NMM, NMM continued their representation of all but one counterclaim defendant in an effort to preserve the case schedule as much as possible. However, both NMM and the CDS Parties now believe that substitution will facilitate completion of discovery and moving the case forward.

As stated in the Declaration of Siddhartha Rao, we do not anticipate that substitution will cause delay in the litigation. [Dkt. 230]. Indeed, very few discovery issues remain in the case. (Feb. 3, 2017 Hearing Tr. 3:1–2, [Dkt. 233-1 p. 4]. Since the February 3 conference before Magistrate

Judge Cott, many of the remaining issues have already been addressed, and we are prepared to complete discovery.

### **3. Discovery is Proceeding As Ordered**

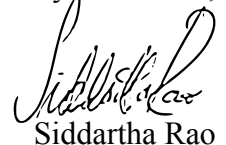
We note that counsel did not communicate with our office prior to filing their letter, as required by Magistrate Judge Cott's Individual Practices Rule I(B)(1). With the opportunity to confer, many of the issues raised in that letter could have been resolved.

We further note the following discovery status:

- The CDS Parties have provided Mr. Dogramaci's office with the names of three independent forensic experts to complete collection. After counsel provided objections, NMM scheduled a further meet and confer, and indicated it would provide additional vendor names upon consultation with the client. In that regard, we have two additional vendors for Mr. Dogramaci's consideration.
- On February 17, NMM produced copies of currently available text messages and records of Skype logs for the individual counterclaim defendants and for C.D.S., Inc.'s employee Alex Gugnisev. NMM also produced emails sent and received by Gael Roussel. Counsel's representation that these were not produced is inaccurate.
- The CDS Parties will prepare revised responses to Rapid Systems document request to correct the response that no text messages have been withheld as directed by Magistrate Judge Cott. [Hearing Tr. 13:2-17].
- Our office will confer with Rapid System's counsel about scheduling the remaining depositions. We will be able to update the Court on this schedule at the February 24 conference.

Based on the foregoing, we respectfully request the Court deny Rapid System CC and Bradley Zetler's request to hold substitution in abeyance and so-order the filed stipulation to substitute counsel.

Respectfully Submitted,



Siddhartha Rao

Enclosures

cc: All Counsel of Record (by ECF)